



MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.multco.us/landuse>

HEARING OFFICER DECISION AND FINAL ORDER

Case File: T3-2011-1419

Location: 30315 NE Hurt Rd.
Township 1 North, Range 4 East, W.M.,
Section 32B, Tax Lot 1800,
Alternative Account #R053501870

Applicant: Kevin Markle **Property Owner:** Kevin Markle

Summary: Application request for a National Scenic Area site Review Permit to build an attached carport and covered deck additions to an existing dwelling and a Major Variance Permit to reduce the front yard setback to match dwelling's existing setback on the property located within the Gorge General Residential – 10 (GGR-10) Zone District in the Columbia River Gorge National Scenic Area.

Base Zone: GGR-10

Site Size: 2.1 acres

1. PROJECT DESCRIPTION

Staff: Application request is for a National Scenic Area Site Review Permit to build an attached carport and covered deck additions to the existing dwelling and a Major Variance Permit to reduce the front yard setback to match the dwelling's existing setback on the property located within the Gorge General Residential – 10 (GGR-10) Zone District in the Columbia River Gorge National Scenic Area.

This request was first submitted as Type II case review for an Administrative Decision, however it was determined the applicant did not meet the requirements for a Administrative Review, Type II Major Variance. The applicant did not have all the property owners of record of property within 100 feet of the subject property consent to the variance. Thus that Case T2-2010-1300 was withdrawn at the applicant's request and the applicant submitted an application for this Type III public hearing case. Some of the exhibits for this case were submitted for the previous case and then at the applicant's request were resubmitted for this case. Thus these exhibits are dated with a date prior to

the date this application was submitted. The resubmitted date for these exhibits is noted in the Exhibits Section 12 of the Staff Report.

The applicant started the project prior to obtaining land use and building permits. Building inspectors noticed the work and the project was stopped for not having proper permits. Under MCC 38.0560(A)(1) A permit or other approval, including building permit applications, may be authorized if: It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This permit along with the building permit will bring the property into full compliance.

2. PROPERTY DESCRIPTION

Staff: The subject property is 2.10 acres and within the Banner Acres Subdivision near the intersection of NE Hurt and NE Ogden and is accessed from Hurt Road. The property has moderate slopes, under 10 percent, and is mostly open pastureland north of the dwelling. Groves of mature fir trees are located along the side property lines on the east and west, with a mix of mature trees species clustered around the dwelling.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No *ex parte* contacts. I did not have any *ex parte* contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdictional Issues

At the commencement of the hearing, I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the Applicant.

TESTIMONY AND EVIDENCE PRESENTED

- 1. George Plummer presented the staff report. The applicant concurred with the staff report and no one else testified in support of or in opposition to the application.
- 2. The Friends of the Columbia Gorge submitted a letter which discussed application requirements. The letter was received as Exhibit H-1.
- 3. An Aerial Photo showing the subject site was submitted and received as Exhibit H-2.

Hearings Officer Decision: The Staff recommended approval of this application and the staff report, analysis and findings therein all support approval of the National Scenic Area Site Review Permit and Variance. The application is approved subject to the following conditions of approval. The Staff report, which is attached hereto as Exhibit 1 to this decision, is incorporated by this reference herein as findings of fact in support of this decision.

Conditions of Approval:

The following conditions listed are imposed to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in brackets.

1. Pursuant to MCC 38.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated and (b) building permits have not been issued; as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 38.0690 and 38.0700. Such a request must be made prior to the expiration date of the permit.
2. Approval of this land use permit is based on the materials submitted including written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents using the most current submittal of revised plans included as Exhibits A.1 through A.9 in the County file for this application. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 38.0660]
3. If any Cultural Resources and/or Archaeological Resources are located or discovered on the property during this project, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts, the following procedures shall be implemented: [MCC 38.7045 (L)]

All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.


- (a) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- (b) Notification – The project applicant shall notify the County Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours. This includes the Yakama Nation, contact Cultural Specialist for the Cultural Resources Program at: (509) 865-5121 extension 4720; FAX number (509) 865-4664. Procedures required in MCC 38.7045 (L) shall be followed.
- (c) Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (see ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).

- (d) Mitigation Plan – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J). Construction activities may recommence when the conditions in the mitigation plan have been executed. [MCC 38.7045 (L)]
4. The following procedures shall be in effect if human remains are discovered during excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts):
- (a) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
 - (b) Notification – Local law enforcement officials, the Multnomah County Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
 - (c) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
 - (d) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.
 - (e) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760.
 - If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC 38.7045 (I).
 - The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC 38.7045 (J) are met and the mitigation plan is executed. [MCC 38.7045 (M)]
5. The property owner shall obtain a Building Permit for the proposed development and complete the required inspections including the final inspection. The property shall obtain a County Right-of-Way Access Permit prior to the issuance of a Building permit. [MCC 38.0560 and MCRR 4.000]

CONCLUSION

Based on the staff testimony and written staff report and the findings and substantial evidence cited or referenced therein, I conclude that the application for a National Scenic Area Site Review Permit and Variance to build an attached carport and covered deck additions to an existing dwelling and a Major Variance Permit to reduce the front yard setback to match the dwelling's existing setback on the property located within the Gorge General Residential – (GGR-10) Zone District in the Columbia River Gorge National Scenic Area is hereby approved subject to the conditions of approval set forth above.

IT IS SO ORDERED, this 31st day of May, 2011.



JOAN M. CHAMBERS, Hearings Officer



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Staff Report

National Scenic Area Site Review Permit and Variance

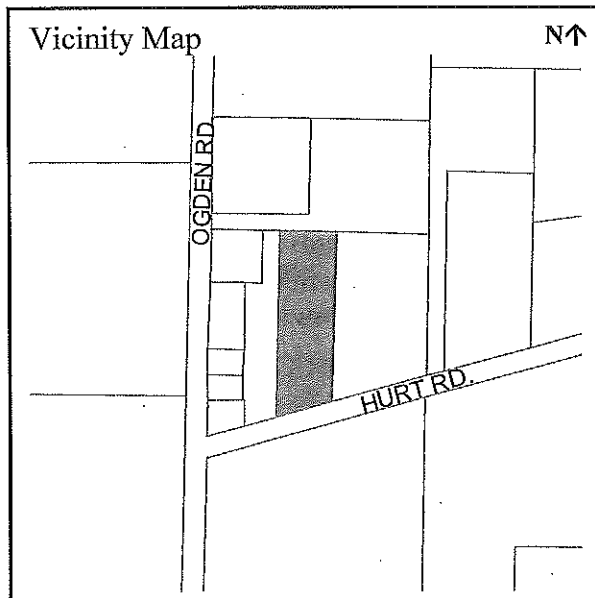
Case File: T3-2011-1419

Scheduled Before one of the following County
Hearings Officer's:

Joan Chambers
Liz Fancher
Bruce White

Hearing Date, Time, & Place:

May 13, 2011, at 10:30 am or soon thereafter, in
Room 103 at the Land Use Planning Division office
located at 1600 SE 190th Avenue, Portland, OR 97233



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Base Zone: GGR-10

Site Size: 2.1 acres

Applicable Approval Criteria: Multnomah County Code (MCC) & Multnomah County Road Rules MCRR: MCC 38.0030: Existing Uses, MCC 38.3000 et al: Gorge General Residential – 10, MCC 38.7000 et. al: Site Review for GMA (General Management Area), MCC 38.8005 et. al: Variances, MCRR 4.000: Access to County Roads and MCRR 6.000: Improvement Requirements.

Recommended Hearing Officer Decision

Staff recommends that the Hearings Officer approve, with recommended conditions of approval, the application request for a NSA Site Review and Major Variance to build additions to the dwelling as proposed in the application submittal in the Gorge General Residential -10 Zone. Staff recommends approval of this request based on the findings established in this report and subject to the recommended conditions of approval.

Recommended Conditions of Approval

If the Hearings Officer finds the proposed application is approvable, staff recommends the following Conditions of Approval. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in brackets.

1. Pursuant to MCC 38.0690, this land use permit expires two years from the date the decision is final if:
(a) development action has not been initiated and (b) building permits have not been issued; as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 38.0690 and 38.0700. Such a request must be made prior to the expiration date of the permit.
2. Approval of this land use permit is based on the materials submitted including written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents using the most current submittal of revised plans included as Exhibits A.1 through A.9. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 38.0660]
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Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

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3. GORGE GENERAL RESIDENTIAL – 10

3.1. Existing Uses

MCC 38.0030(D): Changes to Existing Uses and Structures: Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to this Management Plan.

Staff: The proposed structures include two additions, a carport and covered deck, to a single family dwelling established in 1946. Thus the proposed additions are changes to an existing structure and require a site review pursuant the Management Plan. Multnomah County Code

Chapter 38 was adopted to implement the Management Plan. The findings in Sections 4 through 8 of this Staff Report met that site review and variance requirements.

3.2. Dimensional Requirements

3.2.1. MCC 38.3060(C): Minimum Yard Dimensions are: Front 30 feet, Side 10 feet, and Rear 30 feet.

Maximum Structure Height – 35 feet

MCC 38.3060(D): The minimum yard requirement shall be in-creased where the yard abuts a street having in-sufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Staff: The proposed additions will exceed the 10 foot minimum side yard setback for both side yards and the additions exceed the 30 foot minimum rear yard setback, thus this standard is met for the side and rear yards. However the front yard 30 foot minimum setback is not met because the existing dwelling does not meet that minimum yard standard.

According to the applicant's narrative (Exhibit A.4) the proposed additions are 22 feet from the road and the site plan map (Exhibit A.2) shows the existing dwelling is about 22 feet from a utility pole in front of the dwelling. The utility pole is likely within the right-of-way. The applicant did not submit a survey demonstrating the exact distance of the proposed additions from the Hurt Road right-of-way line. However, according to County 2008 Aerial Photo (Exhibit B.3) the dwelling appears to be about 15 feet from the Hurt Road right-of-way line. Thus the reduction of the minimum front yard requires a Variance approval. The findings for the Variance criteria can be found in Section 8 of this Staff Report.

The proposed additions are less than 15 feet in height, thus meeting the maximum structure height standard. The Hurt Road right-of-way exceeds the width standard, thus no additional minimum yard setback is required.

3.2.2. MCC 38.3060(D): The minimum yard requirement shall be in-creased where the yard abuts a street having in-sufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Staff: The Hurt Road right-of-way exceeds the minimum 50 foot width standard for a local road, thus no additional minimum yard setback is required.

3.2.2. MCC 38.0060: Agricultural Buffer Zones

All buildings, as specified, shall satisfy the following setbacks when proposed to be located on a parcel which is adjacent to lands designated GGA– 20 or GGA– 40:

Type of Agriculture	Type of Buffer		
	Open or fenced	Natural or created vegetation barrier	8 foot berm or terrain barrier
Orchards	250'	100'	75'
Row crops/vegetables	300'	100'	75'
Livestock grazing pasture, haying	100'	15'	20'

Staff: The adjacent property across the Hurt Road is zoned Gorge General Agriculture – 40 (GGA-40). A 100 foot setback is required. The proposed location of the additions is about 80 feet from the GGA-40 property. A Variance to the agriculture setback can be allowed if the criteria in Section 38.0065 are met. Findings for these Variance criteria are included under Section 8 of this Staff Report

4. GMA SCENIC REVIEW

4.1. All Review Uses

4.1.1. MCC 38.7035(A)(1): New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

Staff: The proposed additions will use the existing grade with minimal grading for the footings. *This criterion is met.*

4.1.2. MCC 38.7035(A)(2): New buildings shall be compatible with the general scale (height, dimensions and visible mass) of similar buildings that exist nearby (e.g. dwellings to dwellings). Expansion of existing development shall comply with this guideline to the maximum extent practicable. For purposes of applying this standard, the term nearby generally means buildings within ¼ mile of the parcel on which development is proposed.

Staff: For the proposed additions to the dwelling, expansions of an existing development must comply with this guideline to the maximum extent practicable. Staff used County Assessment records to establish the area of the existing dwelling (Exhibit B.1) and nearby dwellings with a quarter mile (Exhibit B.5).

The applicant states that visible mass of the existing dwelling along with addition is 2077 square feet, however staff calculated the area as 2229 square feet using the submitted floor plan drawings for the additions (Exhibit A.3) as well as the County assessment record to verify the area of the existing dwelling (Exhibit B.1). The visible mass includes a single story dwelling with a partial basement wall exposure.

Below is a table of area information from County Assessment records (Exhibit B.5) for nearby dwellings that have a larger area the existing dwelling plus the proposed additions.

Alt. Acct. #	Address	Dwelling Size (sq. ft.)
R94431055	1001 NE Ogden Rd.	3929
R05350170	1010 NE Ogden Rd.	4122
R053501390	1334 NE Ogden Rd.	7250 ⁽¹⁾
R053501380	1408 NE Ogden Rd.	5708 ⁽²⁾
R05350200	30485 NE Hurt Rd.	6238

(1) Dwelling approved through NSA Case T2-02-051 (6932 sq. ft. approved).

(2) Dwelling approved through Case NSA 7-97

Given there are at least five nearby dwellings with a larger area and some of these are two story dwellings, staff finds that the propose expansion of the existing dwelling is compatible with the general scale (height, dimensions and visible mass) of nearby dwellings given it smaller size and mass. *This criterion is met.*

- 4.1.3. MCC 38.7035(A)(3): New vehicular access points to the Scenic Travel Corridors shall be limited to the maximum extent practicable, and access consolidation required where feasible.**

Staff: The property is accessed via NE Hurt Road, which is not a Scenic Travel Corridor. This criterion is not applicable.

- 4.1.4. MCC 38.7035(A)(4): Property owners shall be responsible for the proper maintenance and survival of any required vegetation.**

Staff: No vegetation will be required.

- 4.1.5. MCC 38.7035(A)(5): For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.**

Staff: The determination of compatibility with the landscape setting is based on information submitted in the site plan. This criterion is met.

4.2. All Review Uses topographically visible from Key Viewing Areas

- 4.2.1. MCC 38.7035(B)(1): Each development shall be visually subordinate to its setting as seen from Key Viewing Areas.**

Staff: The existing dwelling and proposed additions are located in an area that is not topographically visible (can not be seen) from any Key Viewing Areas. Finding for the criteria under MCC 38.7035(B) are required only for proposed development that is topographically visible from a Key Viewing Area. *Thus the criteria under MCC 38.7035(B) need not be met.*

4.3. Rural Residential in Conifer Woodland or Pastoral Landscape Setting

All Review Uses and Conditional Uses within the following landscape settings, regardless of visibility from KVAs:

Staff: The property is located within the Rural Residential Pastoral Landscape Setting.

- 4.3.1 MCC 38.7035 (C)(4): Rural Residential in Conifer Woodland or Pastoral**
- (a) New development in this setting shall meet the design standards for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral or Coniferous Woodland), unless it can be demonstrated that compliance with the standards for the more rural setting is impracticable. Expansion of existing development shall comply with this standard to the maximum extent practicable.**
 - (b) In the event of a conflict between the standards, the standards for the more rural setting (Coniferous Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such standards would not be practicable.**
 - (c) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.**

Staff: The subject property is located in the Rural Residential with Pastoral landscape setting. Therefore, the development must meet the approval criteria for both landscape settings. Findings for both of these landscape settings follow below.

4.3.2. Pastoral Landscape

- 4.3.2.1.MCC 38.7035 (C)(1)(a):** Accessory structures, outbuildings and accessways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.

Staff: The applicant has proposed a carport and covered deck addition to the existing dwelling. Thus the proposed structure are not accessory structures. *Criterion is not applicable.*

- 4.3.2.2.MCC 38.7035 (C)(1)(b):** In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordination for new development and expansion of existing development:

1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.
2. Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.
3. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas fir, Lombardy poplar (usually in rows), Oregon white oak, bigleaf maple, and black locust (primarily in the eastern Gorge). The Scenic Re-sources Implementation Handbook includes recommended minimum sizes.
4. At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

Staff: There is no existing tree cover or vegetation for screening purposes that must be considered since the site is topographically screened from all key Viewing Areas.

- 4.3.2.3.MCC 38.7035 (C)(1)(c):** Compatible recreation uses include resource-based recreation uses of a very low or low-intensity nature, occurring infrequently in the landscape.

Staff: No recreational uses are proposed as part of this application. *Criterion met.*

4.3.3 Rural Residential Landscape

- 4.3.3.1. MCC 38.7035 (C)(3)(a):** Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

Staff: No trees are proposed to be removed through this development. *Criterion met.*

- 4.3.3.2. MCC 38.7035 (C)(3)(b):** In portions of this setting visible from Key Viewing Areas, the following standards shall be employed to achieve visual subordination for new development and expansion of existing development:

1. Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.
2. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.
3. At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

Staff: The existing dwelling and proposed additions are located in an area of the property which is topographically screened. Vegetation for screening purposes is not required. *This criterion does not apply.*

4.3.3.3. MCC 38.7035 (C)(3)(c): Compatible recreation uses include should be limited to small community park facilities, but occasional low- intensity resource-based recreation uses (such as small scenic overlooks) may be allowed.

Staff: No recreational uses are proposed as part of this application. *This criterion does not apply.*

5. GMA CULTURAL RESOURCE APPROVAL CRITERIA

5.1. Cultural Resource Reconnaissance

MCC 38.7045 (A): Cultural Resource Reconnaissance Surveys

(1) A cultural reconnaissance survey shall be required for all proposed uses, except:

*** * ***

(f) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

Areas that have a low probability of containing cultural resources will be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the U.S. Forest Service, public agencies, and private archaeologists.

MCC 38.7045 (B): The cultural resource review criteria shall be deemed satisfied, except MCC 38.7045 (L) and (M), if:

(1) The project is exempted by MCC 38.7045 (A) (1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC 38.0530 (B).

Staff: Marge Dryden of the USDA Forest Service conducted a Heritage Resource Inventory (Exhibit D.1 confidential). On page 2 under the heading "Field Methodology" Ms. Dryden stated that, "reconnaissance survey is not required for renovations of existing house..."

The dwelling was determined to not have significance historic nature as discussed in Exhibit D.1. Ms. Dryden states on Page 4, under the heading "Conclusions and Recommendations", that Sally Donovan in a 2005 inventory found that the subject house, "Sayler House", was determined to not be eligible for listing in the National Register of Historic Places. Ms. Dryden continued that "Renovation of this house will not have any effect on cultural resources if the State Historic Preservation Office concurs with Donovan's evaluation."

The State Historic Preservation Office provided an Oregon Inventory of Historic Properties Documentation Form (Exhibit D.2 confidential) including the finding of "Not Eligible" and the State Historic Preservation Office comments that the office concurs with the Donovan findings. With this body of evidence, these criteria are met. *Criterion met.*

5.2. Cultural Resources Discovered After Construction Begins

MCC 38.7045 (L): The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation

plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- (1) **Halt Construction** – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- (2) **Notification** – The project applicant shall notify the Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
- (3) **Survey and Evaluation** – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (see ORS 273.705 and ORS 358.905 to 358.955). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC 38.7045 (C) (2) and MCC 38.7045 (E).
 - (a) The Planning Director shall, based on the survey and evaluation report and any written comments, make a final decision within 10 days of the receipt of the report of the Gorge Commission on whether the resources are significant.
 - (b) The Planning Director shall require a Mitigation Plan if the affected cultural resources are found to be significant.
 - (c) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC 38.0530 (B).
 - (d) The decision of the Planning Director shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC 38.0530 (B). Construction activities may recommence if no appeal is filed.
- (4) **Mitigation Plan** – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC 38.7045 (J). Construction activities may recommence when the conditions in the mitigation plan have been executed.

Staff: These requirements can be addressed through conditions that would include this language. *This criterion can be met through conditions.*

5.3. Discovery of Human Remains

MCC 38.7045 (M): The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

- (1) **Halt Activities** – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (2) **Notification** – Local law enforcement officials, the Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
- (3) **Inspection** – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (4) **Jurisdiction** – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.

- (5) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760.
- (a) If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC 38.7045 (I).
- (b) The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC 38.7045 (J) are met and the mitigation plan is executed.

Staff: These requirements can be addressed through conditions that would include this language. *This criterion can be met through conditions.*

6. GMA NATURAL RESOURCES REVIEW CRITERIA

6.1. Wetland

MCC 38.7055(A): The wetland review criteria shall be deemed satisfied if:

- (1) The project site is not identified as a wetland on the National Wetlands Inventory (U.S. Fish and Wildlife Service, 1987);
- (2) The soils of the project site are not identified by the Soil Survey of Multnomah County, Oregon (U.S.D.A. Soil Conservation Service, 1983) as hydric soils;
- (3) The project site is adjacent to the main stem of the Columbia River.
- (4) The project site is not within a wetland buffer zone; and
- (5) Wetlands are not identified on the project site during site review.

Staff: The subject property does not contain an identified wetland on the *National Wetland Inventory Maps*. The *Soil Survey of Multnomah County, Oregon* shows the subject site consisting of soil type Mershon Silt Loam 0-8%, which is a moderately well drained soil. The Soil Survey does not indicate the soil type is a hydric soil. The subject site is not adjacent to the Columbia River. The property is not within an identified wetland buffer zone and no wetlands are known to exist on the property. Wetlands have not been discovered through the National Scenic Area Site Review process. *These criteria are met.*

6.2. Stream, Lake and Riparian Area

MCC 38.7060(A): The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant to the provisions of MCC 38.0045, MCC 38.7060 (C), and reviewed under the applicable provisions of MCC 38.7035 through 38.7085:

Staff: The subject property is not within a stream, lake or riparian area and is exempt from this requirement. *These criteria are not applicable for this project.*

6.3. Wildlife Review

MCC 38.7065: Wildlife Habitat Site Review shall be required for any project within 1,000 feet of sensitive wildlife areas and sensitive wildlife sites (i.e., sites used by sensitive wildlife species).

Staff: According to sensitive wildlife habitat maps on file with Multnomah County, no known sensitive wildlife habitat is known to exist within 1,000 feet of the subject site. The Oregon Department of Fish and Wildlife, the State expert on wildlife habitat, did not raise any concerns during the opportunity to comment. *These criteria are not applicable for this project.*

6.4. Rare Plant

MCC 38.7070: Rare Plant Site Review shall be required for any project within 1,000 feet of endemic plants and sensitive plant species.

Staff: According to rare plant maps on file with Multnomah County, no known rare plants are known to exist within 1,000 feet of the subject site. *These criteria are not applicable for this project.*

7. **GMA RECREATION RESOURCES**

MCC 38.7080: Recreation Resource Review Criteria

Staff: The proposal is for additions to the existing single family which has no recreational link. No recreation uses are proposed for the subject site and therefore the project is exempt from this section. *These criteria are not applicable for this project.*

8. **VARIANCE**

8.1. Variance Classification

MCC 38.7605(A): A Major Variance is one that is in excess of 25 percent of an applicable dimensional requirement. A Major Variance must be found to comply with MCC 38.7600 (A).

(1) A Major Variance must be approved at a public hearing except when all owners of record of property within 100 feet of the subject property grant their consent to the variance according to the procedures of MCC 38.7605 (B) (1) and (2).

Staff: The dwelling appears to be about 15 feet from the Hurt Road right-of-way line, according to County 2008 Aerial Photo (Exhibit B.3). The applicant did not submit a survey to demonstrate the exact distance of the proposed additions from the Hurt Road right-of-way line. Given the information available, staff believes, the reduction of the minimum front yard would exceed 25 percent and thus requires a Major Variance approval.

The applicant could not obtain signatures demonstrating consent from all owners of record of property within 100 feet of the subject property grant their consent to the variance (Exhibits A.5 and B.4). The applicant submitted consent from several of the property owners but not all. The property owners that have consented include the property owner directly across Hurt Road. Thus a public hearing is required to consider this request.

8.2. **Variance Approval Criteria**

MCC 38.7600(A): The Approval Authority may permit and authorize a variance from the dimensional requirements of 38.2060 (C), 38.2260 (C), 38.2460 (E), 38.2660 (C), 38.2860 (C), 38.3060 (C), and 38.3260 (C) only when there are practical difficulties in the application of

the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall met criteria (3) and (4).

Staff: The variance request is to reduce a dimensional requirement in MCC 38.3060 (C), the 30 foot minimum front yard dimension. Given the location and design of the existing dwelling these additions could not be allowed without a variance. The both the carport and the covered deck are located on the sides of the dwelling which have the doorway accesses to the dwelling which will serve those additions. The additions are locational dependent due to the location and roofline design of the existing dwelling. Thus there is a practical difficulty with applying the Chapter in regards to the minimum front yard. Following are findings for the required criteria. *This criterion is met.*

- 8.2.1. MCC 38.7600(A)(1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.**

Staff: The circumstance that applies to the intended use, that does not apply generally to other property in the same vicinity or district, is the location of the existing dwelling established in 1946 in relationship to the front yard (Exhibit B.1). While there are other properties nearby with similar situations, old dwellings that do not meet the current minimum yard requirement; however this is not generally the case in the vicinity or district as can be seen on a 2008 aerial photo of the vicinity included as Exhibit B.6. It does not meet the minimum yard requirement established later when zoning was adopted in 1958. Given the location of the physical improvement, the existing dwelling, the additions are locationally dependent on the locations of the existing doorways of the dwelling. These additions would not be allowed without a variance. *This criterion is met.*

- 8.2.2. MCC 38.7600(A)(2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.**

Staff: The front yard dimensional standard would restrict this property to not allow these additions to the existing dwelling. Due to locations of the dwelling entrances (doorways) and design of the dwelling (roof orientation) it would be impractical to add the carport and covered deck to the back of the dwelling to meet the minimum yard requirement. While there are other properties nearby with similar situations, old dwellings that do not meet the current minimum yard requirement; however this is not generally the case in the vicinity or district as can be seen on a 2008 aerial photo of the vicinity included as Exhibit B.6. The minimum yard dimensional standard would restrict the use of the subject property to a greater degree than it restricts all but a few other properties in the vicinity. *This criterion is met.*

- 8.2.3. MCC 38.7600(A)(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.**

Staff: The current 60 foot Hurt Road right-of-way width meets minimum width standard for the right-of-way (Exhibit B.2). The proposed variance should not impact the road or any other property. The variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties. *This criterion is met.*

- 8.2.4. MCC 38.7600(A)(4) The granting of the variance will not adversely affect the realization of the Management Plan nor will it establish a use which is not listed in the underlying zone.**

Staff: The dwelling use was established in 1946 and will not change with the proposed additions. The variance will not adversely affect the realization of the Management Plan, such as the scenic, cultural, natural resource and recreation protection outlined in the Management Plan. The proposed development has been reviewed in the findings in Sections 4 through 7 of the Staff Report and has been found to not adversely affect these resources. *This criterion is met.*

8.3. Variances From Agricultural Setback within the General Management Area

A setback or buffer specified for protection of scenic, cultural, natural, recreation, agricultural or forestry resources may be varied in order to allow a residence to be built on a parcel of land upon a demonstration that:

- 8.3.1 MCC 38.0065(B)(1): The land use designation otherwise authorizes a residence on the tract;**

Staff: The property is within the GGR-10 Zone District which allows dwellings through a review process. *This criterion is met.*

- 8.3.2. MCC 38.0065(B)(2) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could be placed practicably in full compliance with the setback or buffer;**

Staff: The tract is the subject property. The proposed additions to the existing dwelling are not practicable in another location as discussed in previous findings. The locations of the doors on the existing dwelling are access to the proposed carport and the covered deck. The existing house roofing line design would make it impractical to locate the additions on the north side of the dwelling. *This criterion is met.*

- 8.3.3. MCC 38.0065(B)(3) The variance from the specified setback or buffer is the minimum necessary to allow the residence.**

Staff: The proposed additions are located so they are equal to the existing dwelling setback for the deck and less than the existing setback for the carport. Given the 60 foot Hurt Road right-of-way width, the setback will be about 80 feet from the adjacent agricultural land. The property owner of the agricultural land has signed the consent form and has not expressed any concerns. The proposed additions are a minimum for the property to enjoy basic attributes of a carport and a covered deck related to and part of the dwelling use. *This criterion is met.*

9. TRANSPORTATION STANDARDS

Multnomah County Road Rules Section 4: Access Requirements and or Section 6.000: Improvement Requirements.

Staff: The proposal does not involve reconfiguration of the existing access point to a County Right-of-Way, nor would it create a permanent "transportation impact" as defined by the Multnomah County Road Rules. A check of existing County Right-of-Way Access Permit records indicates that the property does not have an access permit. Therefore, the property owner will need to obtain an Access Permit as part of the Building Permit zoning review sign-off. No other action

is necessary to comply with Section 4.000 of the Road Rules (Access Requirements) or Section 6.000 (Improvement Requirements).

10. APPLICATION PROCEDURES

Staff: The application was submitted on January 25, 2011 (Exhibit A.1). Staff sent a letter to the applicant finding the application complete on February 23, 2011 when additional information was submitted (Exhibit C.1). The public hearing was noticed to the Oregonian newspaper and to the property owner within 750 feet of the subject property as well as interested parties, organizations, agencies and tribes on April 21, 2011 (Exhibit C.2). On the day of the hearing, the application will be on Day 79 and the 150th day falls on Saturday, July 23, 2011.

11. CONCLUSION

Based on the findings and other information provided above, staff finds that the applicant has carried the burden necessary for the NSA Site Review and Major Variance to build additions to the dwelling as proposed in the application submittal in the Gorge General Residential -10 Zone. Staff recommends approval of this request subject to the recommended conditions of approval established in this report.

12. EXHIBITS

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

'D' Comments Received

Exhibits with a "*" have an earlier date stamp than the 1/25/11 date the application was submitted. These documents were submitted for Case T2-2010-1300 which was later withdrawn and the documents were resubmitted this case on 1/25/11.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	1/25/11
A.2	1	Site Plan*	1/25/11
A.3	6	Elevations and floor plans for the dwelling and additions*	1/25/11
A.4	4	Narrative address the Code*	1/25/11
A.5	1	Property Owner Consent of Variance Request (property owners signatures)*	1/25/11
A.6	3	On-Site Sewage Disposal Certificate*	1/25/11
A.7	2	Fire District Review Fire Flow Requirements*	1/25/11
A.8	1	Storm Water Certificate*	1/25/11
A.9	1	Addendum to Narrative	2/17/11
'B'	#	Staff Exhibits	Date
B.1	3	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	1	2008 Aerial Photo of Subject Property	NA
B.4	14	A&T Property Information showing owners' names for properties within 100 feet of the subject property	NA
B.5	20	A&T Property Information for selected properties within a quarter mile with dwelling area	NA
B.6	1	2008 Aerial Photo of Vicinity	NA

'C'	#	Administration & Procedures	
			Date
C.1	2	Application Complete Letter	2/23/11
C.2	6	Opportunity to Comment	4/21/11
'D'	#	Comments Received (if needed)	
			Date
D.1	23	Heritage Resource Inventory Report for the Markle Project (Confidential)	12/7/10
D.2	1	State Historic Preservation Office Concurrence Form (Confidential)	12/17/10